

46-740. Ground water allocation; limitations and conditions.

(1) If allocation is adopted for use of ground water for irrigation purposes in a management area, the permissible withdrawal of ground water shall be allocated equally per irrigated acre except as permitted by subsections (4) through (6) of section 46-739. Such allocation shall specify the total number of acre-inches that are allocated per irrigated acre per year, except that the district may allow a ground water user to average his or her allocation over any reasonable period of time. A ground water user may use his or her allocation on all or any part of the irrigated acres to which the allocation applies or in any other manner approved by the district.

(2) Except as permitted pursuant to subsections (4) through (6) of section 46-739, if annual rotation or reduction of irrigated acres is adopted for use of ground water for irrigation purposes in a management area, the nonuse of irrigated acres shall be a uniform percentage reduction of each landowner's irrigated acres within the management area or a subarea of the management area. Such uniform reduction may be adjusted for each landowner based upon crops grown on his or her land to reflect the varying consumptive requirements between crops.

(3) Unless an integrated management plan, a rule, or an order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a municipality, within an area determined by the Department of Natural Resources to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Any allocations to a municipality that have been made as of November 1, 2005, shall remain in full force and effect unless changed by the appropriate natural resources district;

(b)(i) For any municipality that has not received an allocation as of November 1, 2005, the minimum annual allocation may be the greater of either the amount of ground water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or the governmental, commercial, and industrial uses of the municipality plus a per capita allowance. Water for commercial and industrial uses may be limited as specified in subdivision (b)(iii) of this subsection.

(ii) The per capita allowance shall be based on the location of the municipality, increasing in equal increments from east to west, and shall not be less than two hundred gallons per person per day at 95 degrees, 19 minutes, 00 seconds longitude and not less than two hundred fifty gallons per person per day at 104 degrees, 04 minutes, 00 seconds longitude. Persons served by a municipality

outside of its corporate limits shall be considered part of the municipality's population if such service begins prior to January 1, 2026.

(iii) Prior to January 1, 2026, any new or expanded single commercial or single industrial development served by any municipality within the fully appropriated or overappropriated area which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715;

(c) Prior to January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715 and shall not affect the municipal allocations outlined in subdivisions (3)(a) and (b) of this section. Any permanent reduction in consumptive use of water associated with municipal growth, including governmental, industrial, and commercial growth, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such municipality is located; and

(d) To qualify for the exemption specified in subsection (3) of this section, any city of the metropolitan class, city of the primary class, city of the first class, or city of the second class shall file a conservation plan with the natural resources district, if required by the integrated management plan. Villages and other municipalities smaller than a city of the second class shall not be required to submit a conservation plan to qualify for such exemption.

(4) On and after January 1, 2026, the base amount for an annual allocation to a municipality shall be determined as the greater of either (a) the amount of water authorized by a permit issued pursuant to the Municipal and Rural Domestic Ground Water Transfers Permit Act or (b) the greatest annual use prior to January 1, 2026, for uses specified in subdivision (3)(b) of this section plus the per capita allowance described in subdivision (3)(b)(ii) of this section. On and after January 1, 2026, increases in the consumptive use of water by a municipality that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715. Each municipality may be subject to controls adopted pursuant to such section for amounts in excess of the allocations.

(5) Unless an integrated management plan, rule, or order is established, adopted, or issued prior to November 1, 2005, no integrated management plan, rule, or order shall limit the use of ground water by a nonmunicipal commercial or industrial water user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713, until January 1, 2026, except that:

(a) Prior to January 1, 2026, the minimum annual allocation for a nonmunicipal commercial or industrial user shall be the greater of either (i) the amount specified in a permit issued pursuant to the Industrial Ground Water Regulatory Act or (ii) the amount necessary to achieve the commercial or industrial use, including all new or expanded uses that consume less than twenty-five million gallons annually. Any increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715;

(b) Prior to January 1, 2026, any new or expanded single commercial or industrial development served by a nonmunicipal well within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 which, after July 14, 2006, commences water use resulting in the consumptive use of water in amounts greater than twenty-five million gallons annually may be subject to controls adopted pursuant to section 46-715. This subdivision does not apply to a water user described in this subdivision that is regulated by the Industrial Ground Water Regulatory Act and the United States Nuclear Regulatory Commission;

(c) On and after January 1, 2026, the base amount for an annual allocation to a nonmunicipal commercial or industrial user within an area determined by the department to be fully appropriated pursuant to section 46-714 or designated as overappropriated pursuant to section 46-713 shall be the amount specified in subdivision (5)(a) or (b) of this section;

(d) On and after January 1, 2026, increases in the consumptive use of water by a nonmunicipal commercial or industrial water user that result in a decrease in streamflow shall be addressed by the integrated management plan pursuant to controls or incentive programs adopted pursuant to section 46-715; and

(e) Any reduction in consumptive use associated with new nonmunicipal industrial or commercial uses of less than twenty-five million gallons, during the period between July 14, 2006, and January 1, 2026, shall accrue to the benefit of the natural resources district within which such nonmunicipal industrial or commercial user is located.

Source: Laws 1982, LB 375, § 12; Laws 1991, LB 51, § 5; Laws 1993, LB 439, § 3; R.S.1943, (1993), § 46-673.10; Laws 1996, LB 108, § 32; Laws 2001, LB 135, § 3; R.S.Supp.,2002, § 46-656.26; Laws 2004, LB 962, § 80; Laws 2006, LB 1226, § 28.

Cross References

Industrial Ground Water Regulatory Act, see section 46-690.

Municipal and Rural Domestic Ground Water Transfers Permit Act, see

section 46-650.